

Sunshine Task Force  
Cover Letter

Dear Mayor Reed and Members of the City Council,

The members of the Sunshine Reform Task Force believe it is imperative that we provide you with this supplemental letter to accompany our Phase II report. Our concern results from the scale and the uncompromising nature of staff's objections to our recommendations. As an advisory body, we fully recognize the obligation of city management to critically review our work. We considered the treatment of the Phase I report to be reasonable. However, the fact that so many of our Phase II proposals have been completely rejected in favor of a reliance on the unmodified status quo requires us to explicitly state the thinking and values that lie behind our specific policy initiatives.

- 1) We began our work on Phase II with the expectation that the leadership of the City of San Jose remained committed to further substantial improvements in the ability of the public to have access to government information and to meaningfully participate in government decision-making. The hundreds of hours of work we dedicated to Phase II were based on this understanding. Nevertheless, we recognize that institutions sometimes choose to slow down or terminate periods of reform in order to consolidate previous changes or for other reasons. If this is case in San Jose, although we would have preferred to have been notified a year ago, we would genuinely appreciate being informed now. None of us want to spend numerous afternoons at Rules Committee meetings discussing dozens of new open government ideas with city council members who have already determined (for what they genuinely consider to be legitimate reasons) that this sunshine process has simply gone far enough.
- 2) In many cases, open government innovations require the commitment of staff time and budget allocations. The Sunshine Task Force is fully aware of the city's fiscal difficulties and the challenge of adopting any proposal that involves additional expenditures. However, we also recognize that the City has a long standing practice of preparing "wish lists" of services that it would like to deliver but which it must defer until resources become available. We expected that city staff would suggest that many of our recommendations involving new costs would be placed on such lists, and we are stunned that staff has taken the perspective that the lack of funds means proposals should be abandoned. Is there a reason why open government recommendations should be subject to a different fiscal standard than street maintenance?
- 2) One of the primary goals of the Sunshine Task Force in Phase 2 has been the design of a system for the enforcement of a San Jose Sunshine Ordinance. The lack of such a mechanism has been a major defect of sunshine reform efforts in other jurisdictions. While the precise form of an enforcement system is certainly open to serious debate, we have viewed one element of such a

process to be essential to its effective functioning. That element is independence. In other words, if a San Jose resident issues a complaint regarding the way in which a city department has implemented the Sunshine Ordinance, that complaint should not be decided by the department being challenged. Similarly, if the City attorney's advice regarding the public records act is the subject of a complaint, the complaint should not be decided by the City Attorney. The principle of independent review of government action is as old as the doctrine of separation of powers and checks and balances incorporated in the United States Constitution. Yet, city staff have rejected this principle and argued that city management should essentially be judges in their own cases.

- 3) Although the Phase 2 report is composed of numerous separate sections, the Task Force views its work as an integrated whole. For example, language regarding access to public records was influenced by the expectation that an independent enforcement mechanism would be included in the final draft. When staff rejects entire elements of the report, they not only interfere with the planned operation of that section but with other sections as well.
- 4) In certain cases, primarily in the section dealing with police records, the Task believes city staff is significantly misreading both the intent and the actual text of the Phase 2 report. For example, city staff claims, "The reports covered would include all reports written by the Bureau of Field Operations including reports and files of the Special Operations Unit that conducts high-risk arrest and search and seizure operations." But the proposed ordinance *never* calls for public access to files and specifically *prohibits* access to reports that would jeopardize "the successful completion of the investigation or a related investigation."

It is our hope that the negative perspective demonstrated by city staff does not reflect the attitude of the City Council towards the completion of the Sunshine Reform process in San Jose. As already noted, we have always expected our work would be subjected to full and careful review – by staff, by elected officials, by the community. However, we also believed that such a review would be undertaken from the viewpoint that open government reforms were both necessary and a constructive addition to the city's developing commitment to political ethics and to meaningful public participation in decision-making.

To conclude, we would like the evaluation of the Phase 2 report to take place in the "sunshine." We, therefore, request that the *entire* Phase 2 report be agendized for consideration by the city council along with any modifications recommended by staff and/or by the Rules and Open Government Committee.

Thank you for your consideration.